

Chapter NR 118

STANDARDS AND CRITERIA FOR THE
LOWER ST. CROIX NATIONAL SCENIC RIVERWAY

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(Sections 23.09, 23.11, 30.27 & chapter 227, Stats.)

Note: Chapter NR 118 as it existed on June 30, 1980 was repealed and a new chapter NR 118 was created effective July 1, 1980.

NR 118.01 Purpose. The following rules are necessary to reduce the adverse effects of poorly planned shoreland and bluff area development, to prevent pollution and contamination of surface and groundwaters and soil erosion, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to maintain property values, and to preserve and maintain the exceptional scenic and natural characteristics of the water and related land of the lower St. Croix river valley in a manner consistent with the national wild and scenic river act (P.L. 90-542), the federal lower St. Croix river act of 1972 (P.L. 92-560) and the Wisconsin lower St. Croix river act (chapter 197, laws of Wisconsin, 1973).

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; am. Register, February, 1984, No. 338, eff. 3-1-84.

NR 118.02 Applicability. (1) **LOWER ST. CROIX RIVER DISTRICT BOUNDARIES.** These rules shall apply within the boundaries of the lower St. Croix scenic riverway as set forth in the master plan jointly prepared by the states of Minnesota and Wisconsin and the national park service pursuant to P.L. 92-560 except that the incorporated area of the city of St. Croix Falls lying west of STH 35 and STH 87 in section 30, T34N, R18W shall be included.

(2) **LOWER ST. CROIX RIVER DISTRICT.** Each ordinance enacted or amended by a city, village or county shall designate a lower St. Croix river district in accordance with the previously described boundaries.

(3) **LOCAL REGULATIONS.** Local regulations adopted pursuant to s. 30.27, Stats., may be more, but not less, restrictive than the standards contained in these administrative rules. In no case shall a use or activity allowed by these rules be permitted contrary to local zoning regulations.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.03 Definitions. (1) "Accessory building" means a building on the same premises and subordinate to the principal use customarily incidental thereto.

(2) "Agriculture" means general farming, including dairying, livestock and poultry raising, nurseries, greenhouses and other similar enterprises.

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(3) "Bluff face" means that area riverward from the bluffline where the slope toward the river equals 12% or more with the horizontal interval of measurement not exceeding 50 feet.

(4) "Bluffline" means a line along the top of a slope, connecting the points at which the slope, proceeding away from the river or adjoining watershed channel and which is not visually inconspicuous, becomes less than 12%. The location of the bluffline shall be certified by a registered land surveyor, soil scientist or a landscape architect.

(5) "Building line" means a line measured across the width of the lot at that point where the main structure is placed in accordance with setback provisions.

(6) "Department" means the Wisconsin department of natural resources.

(7) "Dock" means a temporary structure extending into the water to facilitate the launching or mooring of watercraft or for fishing during the open water season.

(8) "Dwelling unit" means a building or portion thereof with rooms arranged, designed, used or intended for one family.

(9) "Incorporated area" means the area that was within the corporate limits of St. Croix Falls, Osceola, North Hudson, Hudson or Prescott on January 1, 1976.

(10) "Land division" means any division of a lot, parcel or tract by the owner thereof or the owner's agent, for the purpose of transfer of ownership or building development which creates one or more parcels or building sites of 20 acres or less.

(11) "Landscape architect" means a person who has graduated with a major in landscape architecture from a college accredited by the American Society of Landscape Architects.

(12) "Lift" means a mechanical device either temporary or permanent containing a mobile open top car including hand or guard rails and sides of adequate height to contain small loose articles, a track upon which the open top car moves, and a mechanical device to provide power to the open top car.

(13) "Local ordinance" means any county, town or municipal ordinance, portion of an ordinance, or amendments thereto, adopted by a local unit of government, with authority from state enabling legislation, which regulates the use of land within the lower St. Croix river district.

(14) "Lot" means a parcel, piece or portion of land, defined by metes and bounds, certified survey, recorded land subdivision plat or other means and separated from other lots, parcels or similar units by such description.

(15) "Net project area" means lands intended for building development within identified project boundaries lying within the lower St. Croix river district less:

(a) Land slopes in excess of 12% toward the river.

(b) Area of stream floodways.

(c) Area of road right-of-way.

(d) Major drainage ways.

(16) "Nonconforming use" means an existing lawful use of a structure, building or accessory use which is not in conformity with the provisions of the St. Croix riverway zoning ordinance for the area of the lower St. Croix river district which it occupies.

(17) "Ordinary highwater mark" means the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics.

(18) "Selective cutting" means the removal of single trees or shrubs.

(19) "Setback" means the minimum horizontal distance between a structure and:

(a) The ordinary highwater mark;

(b) The bluffline; or

(c) Lot lines.

(20) "Sewage disposal system" means any system for the collection, treatment, and disposal of sewage including, but not limited to, septic tanks, soil absorption systems, holding tanks and drainfields.

(21) "Single family dwelling" means a detached building containing one dwelling unit.

(22) "Slope" means all lands between the ordinary highwater mark and the bluffline.

(23) "Soil scientist" means a person who has graduated with a major in soil science from a 4-year college program.

(24) "Stairways" means a series of steps which may be constructed of wood, metal, stone or any combination of those materials for the purpose of allowing persons upward and downward mobility in bluff areas.

(25) "Structure" means any wall, building or appurtenance thereto but not including stairways and lifts.

(26) "Substandard lot" means a lot created and recorded prior to the effective date of ordinances implementing these rules which does not meet the dimensional requirements of these rules.

(27) "Transmission services" means electric power, telephone and telegraph lines, cables or conduits, or pipelines that are used to transport large blocks of power or oil or gas, convey information or transport materials between 2 points. In the case of electrical power, this will generally apply to transmission lines operating at 69,000 volts or more. For main pipeline crossings of gas, liquids or solids in suspension, this means those uses to transport such materials between 2 points.

(28) "Unincorporated area" means an area that is not an incorporated area as defined in sub. (9).

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(29) "Visually inconspicuous" means difficult to see or not readily noticeable in summer months as viewed from the river.

Note: All distances unless otherwise specified shall be measured horizontally.

(30) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; renum. (9) to (26) to be (10) to (15), (17) to (27) and (29), cr. (9), (16), (28) and (30), am. (3), (4), (20), (26) and (27), Register, February, 1984, No. 338, eff. 3-1-84.

NR 118.04 Severability. If any section, paragraph, phrase, sentence or clause of this chapter should be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.05 Land uses and activities in the lower St. Croix river district. The following classifications, uses, structures and services shall be subject to the general provisions contained in s. NR 118.06.

(1) **PERMITTED USES.** (a) Single family detached dwellings.

(b) Nonstructural open space uses associated with maintaining the value of certain lands for natural areas, scenic, recreation, wildlife management, water and soil conservation and other such purposes.

(c) Agricultural (nonstructural) including silviculture in compliance with s. NR 118.06 (11).

(d) Highway and local park waysides, rest areas and scenic overlooks.

(e) Governmental structures used as information centers or for resource management to improve the fish and wildlife habitat.

(f) Signs as approved by state or local governments which are necessary for public health and safety; signs indicating areas that are available or not available for public use; and personal name or other similar signs that are otherwise lawful, provided they are not visible from the river.

(g) Accessory buildings, provided they are not located closer to the bluffline than the principal structure.

(h) Docks and piers that have a permit from the army corps of engineers.

(i) In incorporated areas, those uses which were permitted by existing zoning regulations on January 1, 1976. Municipalities may amend zoning regulations to make them more restrictive than those regulations in effect on January 1, 1976. When a municipality has developed a more restrictive zoning regulation, that municipality may not subsequently amend the standard to make it less restrictive.

(2) **CONDITIONALLY PERMITTED USES AND ACTIVITIES.** (a) The following uses are subject to approval after class 2 notice and public hearing:

1. Land divisions.

2. Transmission services.

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3 Filling, grading and rock riprapping for shoreline protection.

4. Stairways or lifts.

5. In incorporated areas, those uses which were conditionally permitted by existing zoning regulations on January 1, 1976. Municipalities may amend their conditionally permitted use provisions to make them more restrictive than those in effect on January 1, 1976. When a municipality has developed more restrictive conditionally permitted uses, that municipality may not subsequently amend its permitted use standards to make them less restrictive.

(b) The applicant shall submit sufficient copies of the following information to the appropriate governing body 30 days prior to the hearing on the application for a conditionally permitted activity. The applicant seeking a permit for land divisions, transmission services, or filling and grading shall submit information required by subds. 1. to 7. The applicant seeking a permit for a stairway or lift shall submit information required by subds. 1. to 4. and 7. Information required by subds. 1. to 6. shall be certified by a professional engineer or land surveyor registered in Wisconsin.

1. Plat or survey showing the property location, boundaries, dimension, elevations, blufflines, utility and roadway corridors, and the ordinary highwater mark or regional flood elevation (if applicable).

2. Location of existing and proposed structures.

3. Location of existing and proposed alterations of vegetation and topography including filling and grading.

4. Adjoining land and water uses, including natural values in terms of spawning grounds and fish and game habitat.

5. Suitability of area for onsite waste disposal. Size and location of system shall be indicated. If a municipal wastewater collection and treatment system is to be utilized, the developer shall submit a written agreement from the municipality or sanitary district indicating that the system has the capacity to handle the development.

6. Water supply system.

7. Photos of the area of proposed permitted and conditional uses and activity as viewed from the lower St. Croix river.

(c) Review of conditionally permitted uses and activities. No less than 20 days prior to the hearing, the local government shall send a copy of the above information to the following agencies for review and comment:

1. County planning department.

2. Department of natural resources.

3. Regional planning commission.

4. Town board.

5. Minnesota-Wisconsin boundary area commission.

(d) Hearing record and decision. The hearing record shall contain the comments of the agencies listed in par. (c). The decision in regard to

permitting land divisions, transmission services, or filling and grading shall address all of the following points. The decision in regard to permitting lifts or stairways shall address all points with the exception of subd. 7. No use or activity shall be permitted unless it can feasibly comply with all requirements of s. NR 118.06.

1. The scenic and recreational qualities of the lower St. Croix scenic riverway.
2. The maintenance of safe and healthful conditions.
3. The prevention and control of water pollution including sedimentation.
4. The location of the site with respect to floodplains and floodways of rivers and streams.
5. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative covers.
6. Location of site with respect to existing or future access roads.
7. The amount of liquid wastes to be generated and the adequacy of the proposed disposal system.
8. The compatibility of the project with uses on adjacent land.
9. The use of common corridors for locating proposed facilities within or adjacent to existing public service facilities such as roads, bridges and transmission services.

(e) The local government shall submit a copy of the written decision, including a summary of the hearing, to the department within 5 work days of the date of the hearing for department approval, modification or rejection within 20 days. No response within 20 days shall be deemed an approval.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; am. Register, February, 1984, No. 338, eff. 3-1-84.

NR 118.06 General provisions. The following general provisions shall be contained in local ordinances:

(1) **PROHIBITED USES.** Within the lower St. Croix river district, all uses not listed as conditionally permitted or permitted uses shall be prohibited.

(2) **DENSITY STANDARDS.** (a) *Unincorporated areas.* 1. Detached single family dwellings. No more than one dwelling per unit per acre of net project area may be allowed. There may be no more than one principal structure on each parcel.

2. Planned unit development. The number of proposed family dwellings permitted may not exceed by more than 50% the number of units allowed if the proposal was based on single family dwelling units.

(b) *Incorporated areas.* Lot density standards in effect on January 1, 1976 shall apply within incorporated areas. Municipalities may amend lot density standards to make them more restrictive than those standards in effect on January 1, 1976. When a municipality has developed a

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more restrictive lot density standard, that municipality may not subsequently amend the standard to make it less restrictive.

(3) (a) The following minimum setbacks from the ordinary highwater mark and bluffline shall apply to all structures and private roads and parking areas, except those specified as exceptions herein:

1. In incorporated areas, not less than 100 feet from the ordinary highwater mark and not less than 40 feet from the bluffline, whichever is greater.

2. In unincorporated areas, not less than 200 feet from the ordinary highwater mark and not less than 100 feet from the bluffline, whichever is greater.

(b) The board of adjustment for counties or the board of appeals for cities and villages may grant a variance to the setback requirements in par. (a) for pre-existing parcels only where the applicant has proven that a hardship exists. However, no variance may be granted for a setback which results in a change in natural appearance of the shoreline, slope or bluffline as viewed from the river. It is the responsibility of the applicant to justify the need for such a reduced setback and display how the proposed structure will be visually inconspicuous from the river. The setback line shall be delineated on the application and staked out by the applicant. The local enforcement official shall certify the accuracy of setback lines prior to construction.

(4) **PLACEMENT OF STRUCTURES.** Structures may not be located on slopes of greater than 12% facing the lower St. Croix river. Alterations of such slopes to overcome this limitation are not permitted.

(5) **HEIGHT.** The height of any structure may not exceed 35 feet above average ground level.

(6) **LOT WIDTH.** (a) In unincorporated areas, parcels or lots created for single family dwellings shall be no less than 200 feet in width at the building line.

(b) In incorporated areas, parcels or lots created for single family dwellings shall be no less than 100 feet in width at the building line.

(7) **LOT LINE SETBACK.** (a) In unincorporated areas, all structures or portions of structures shall be located at least 25 feet from all property lines.

(b) In incorporated areas, lot line setbacks in effect on January 1, 1976 shall apply. Municipalities may amend lot line setback standards to make them more restrictive than those standards in effect on January 1, 1976. When a municipality has developed a more restrictive lot line setback standard, that municipality may not subsequently amend the standard to make it less restrictive.

(8) **DOCKS AND PIERS.** Docks and piers associated with riparian residential developments shall be allowed only during the open water season, shall only extend into the water the minimum distance necessary to allow the launching and mooring of watercraft, shall be parallel with the shoreline whenever possible, and may not exceed the resource limitations of the site or extend beyond the slow speed shore zone. No covered slips or framed canopies may be constructed. Docks and piers shall be colored

in earth tones. Lighting of dock or pier areas is permitted only if required by federal, state or local laws or for lighting municipal facilities in incorporated areas only for health and safety reasons.

(9) **LIFTS.** Lifts may be permitted provided the following standards are met:

(a) The primary function of a lift shall be for the transportation of persons up and down the bluff face.

(b) No lift may be designed and utilized for the transport of boats or machinery up or down the bluff face.

(c) All visible parts of lifts shall be painted or finished in natural or earth tones and shall be visually inconspicuous.

(d) Lifts shall be located in the least visually conspicuous portion of any lot.

(e) No construction may begin on any lift until the applicant has provided local code enforcement officials with a plan showing all necessary construction data including location of the lift, design, size, color, dimensions and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that the lift components are securely anchored to prevent them from shifting and from causing accelerated erosion.

(f) The car of any lift may not exceed 4 by 6 feet. Cars may have hand rails but no canopies or roofs may be allowed. Location of the transporting device or power source shall be visually inconspicuous.

(10) **STAIRWAYS.** Stairways may be permitted provided the following standards are met:

(a) No stairway may exceed 36 inches (3 feet) in width.

(b) Landings may be permitted at a minimum vertical interval of 20 feet. Landings may not exceed 40 square feet in area.

(c) Stairways shall be painted or stained in earth or natural tones or may be left unfinished if constructed of wood materials and shall be visually conspicuous.

(d) Railings of hand rails are permitted in conjunction with stairs and shall be painted or stained the same color as the stairways.

(e) Canopies or roofs are not permitted on stairways or landings.

(f) Stairways shall be located in the most visually inconspicuous portion of any lot. Native vegetative plantings shall be used to screen the stairway from the river.

(g) Stairways shall be anchored and supported with pilings or footings.

(h) No construction may begin until the applicant has submitted a plan for the stairway to the local enforcement official showing all necessary construction data including location, design, dimensions, color, construction materials and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that

the stairway components are securely anchored to prevent them from shifting and from causing accelerated erosion.

(11) **VEGETATIVE MANAGEMENT PROVISIONS.** The vegetation shall be managed to maintain the essential character, quality and density of existing growth. Compatible native species of vegetation shall be used for replacement or new plantings. Vegetation shall effectively screen lifts and stairs within 5 years, otherwise the lift and stairs shall be removed.

(a) On lands within 200 feet of the ordinary highwater mark and 40 feet landward of the bluffline, the following standards shall apply.

1. Removal of trees and shrubs is not permitted.
2. The above cutting provisions may not prevent:
 - a. The removal of diseased or insect infested trees, or of rotten or damaged trees that present safety hazards.
 - b. The pruning of trees, the cutting of shrubs, understory vegetation, bushes or grasses, or the harvesting of nonwood fiber crops.
 - c. The construction of structures in compliance with the standards contained in sub. (3) (b).
 - d. The practice of forestry on lands enrolled under the woodland tax law or forest crop law (ch. 77, Stats.) as prescribed in a department approved forest management plan which requires that vegetation be removed in a manner that protects the scenic quality of the river. Modifications to commonly accepted silvicultural methods shall be prescribed by the department forester where necessary to protect the esthetic values of the area.

(b) Vegetative cutting elsewhere in the lower St. Croix river district may be conducted only where it is accessory to a permitted or conditionally permitted activity.

(12) **GRADING AND FILLING PROVISIONS.** (a) Any grading or filling of the natural topography in excess of that normally required for the construction of a structure or for normal yard maintenance shall be subject to all applicable state laws, the provisions for conditionally permitted activities, and in addition:

1. An application for a permit shall include a detailed plan and schedule of the earth moving activities, including a plan which shows how vegetative cover will be reestablished at what density and within what timeframe.
2. Approval of a plan shall be conditioned upon the following:
 - a. No filling or grading may be allowed on slopes greater than 12% except for rock riprapping for shoreline protection.
 - b. Diversions, silting basins, terraces and other methods to trap sediments shall be used where necessary.
 - c. Fill shall be stabilized according to accepted engineering standards.

(b) Lagooning and dredging are prohibited unless authorized by permit from the department. Protection against erosion, sedimentation and impairment of fish and aquatic life shall be assured.

(c) The drainage or filling of wetlands is prohibited.

(d) Any local approval of a plan or permit may not negate the requirements for obtaining state or federal permits or approvals.

(13) **COLOR OF STRUCTURES.** The exterior color of structures including roofs, stairways, docks and lifts shall be natural wood and earth tones.

(14) **SUBSTANDARD LOTS.** Lots of record in the register of deeds office on January 1, 1976 or the date of enactment of an amendment to a local ordinance which do not meet the requirements of s. NR 118.06 may be allowed as building sites provided that:

(a) The lot is in separate ownership from abutting lands, or, if lots in an existing subdivision are in common ownership, that each of the lots have at least one acre of net project area, and

(b) The proposed use conforms to the requirements of these rules and any underlying zoning or sanitary code requirements.

(15) **NONCONFORMING USES.** All nonconforming uses shall be regulated in accordance with ss. 59.97 (10) and 62.23 (7) (h), Stats.

(16) **TRANSMISSION FACILITIES.** All new and updated transmission and distribution facilities shall be buried or shall share existing public or utility rights-of-way except the existing pipeline corridor in section 2, township 33 north, range 19 west, Polk county, Wisconsin.

(17) **SUBDIVISIONS.** In any new subdivision with river frontage there shall be one designated location for a stairway or lift.

(18) **PRIVATE SEWAGE SYSTEMS.** All private sewage systems shall be constructed in accordance with the provisions of ch. ILHR 83.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; cr. (11) (a) 2. c., Register, May, 1982, No. 317, eff. 6-1-82; r. and recr. (2), (3) (a), (6) and (7), am. (3) (b), (4), (5), (8), (9) (intro.), (b), (c), (e) and (f), (10) (intro.), (a), (b), (f) and (h), (11) (intro.), (a) 2. intro., a. and b., (12) (a) 2. a., (14) (intro.), renum. (11) (a) 2. c. to be 2. d. and am., renum. (15) and (16) to be (16) and (17), cr. (11) (a) 2. c., (12) (d), (15) and (18), Register, February, 1984, No. 338, eff. 3-1-84.

NR 118.07 Administrative provisions. (1) **ADOPTION AND REVIEW OF ORDINANCES.** (a) Ordinances implementing the provisions of this chapter shall be adopted within 90 days of the promulgation of these rules.

(b) Upon adoption of an ordinance implementing these rules, the governmental unit shall submit 2 copies of the ordinance to the department of natural resources. The department shall review such ordinance and respond to its adequacy in meeting the rules.

(2) **REVIEW OF APPEALS.** (a) All appeals for conditionally permitted activities, amendments and variances shall be reviewed by the department and comments submitted to the appropriate governmental unit for inclusion into the hearing record.

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(b) In objecting to an appeal, the department shall fully state, in writing the basis for its opposition and appear at the hearing to explain its position.

(c) Special exception permits, conditional use permits, amendments or variances may not be approved over the objection of the department.

(d) A permit for a conditionally permitted activity in an unincorporated area may not be issued over the written objection of a town board.

1. Such objection shall be presented in writing and in person at the public hearing of the conditionally permitted activity; and

2. Such objection shall explain where the proposed project is inconsistent with these rules, the lower St. Croix river protection act, or town zoning regulations.

(e) Where additional information is introduced at the hearing by the applicant or where the applicant may wish to review the department's or town's opposition, the hearing record may be held open for review of such information or position.

1. This action by the local government shall stay any construction by the applicant.

2. If at the end of 30 days from the date of the hearing, the department or the town has not changed its position, the hearing record shall be closed.

3. The department shall assist the governmental units in implementing and enforcing ordinances adopted pursuant to these rules.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; am. (2) (c), (d), (e) 1. and 2., Register, February, 1984, No. 338, eff. 3-1-84.